IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 12041 of 2006
with
SPECIAL CIVIL APPLICATION No. 12043 of 2006
with
SPECIAL CIVIL APPLICATION No. 12044 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAMSHIBHAI RAJABHAI SOLANKI - Petitioner(s)
Versus
UNITED INDIA INSURANCE CO LTD - Respondent(s)

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Appearance :
MS TEJAL K SHAH for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1,
MR MAULIK J SHELAT for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 21/08/2006

COMMON ORAL JUDGMENT

All these three petitions are filed by one unfortunate person, named, Ramshibhai Rajabhai Solanki. He was unfortunate because on 10th November 1992 when he was travelling in an auto-rickshaw bearing Registration No.GTW 4708 to go to Chotila Temple, a truck bearing Registration No.GJ-3-3082 came with full sped and collided with the auto-rickshaw. Due to this accident the petitioner suffered a fracture in his right hand, right leg and face, and also suffered brain hemorrhage. He was taken to a hospital and was treated as an in-door patient for a long period. As per the medical certificate he suffered 75% permanent disability. He lost his wife and son in the said accident.

He filed the following Motor Accident Claim Petitions (MACP) in the Motor Accident Claims Tribunal (Auxi), Surendranagar (hereinafter referred to as “the Tribunal) to get compensation for the injuries sustained by him to the tune of Rs.72,000/-; to the tune of Rs.1.20 lakhs on account of the sad demise of his wife; and to the tune of Rs.1,02,000/- on account of the sad demise of his son. The Tribunal was pleased to award the amount of compensation as under:

MACP No.	**FILED FOR**	**Amount awarded Rs.**
183 of 1993	**Self**	**0,72,000/-**

MACP No.	FILED FOR	Amount awarded Rs.
184 of 1993	Wife	1,20,000/-
185 of 1993	Minor son	1,02,000/-

The Tribunal was pleased order that the amount awarded be deposited with the State Bank of Saurashtra, Surendranagar in the name of the petitioner for a period of five years.

It is the case of the petitioner that due to the injuries sustained by him he is not able to walk without the support of a stick. His right hand is not working, he is not able to do any work and is not able to earn his livelihood. As the petitioner started having pain in his leg he consulted the doctor, who on perusal of X-Ray Report suggested operation of his hip joint for installing an iron plate. The doctor also informed him that the operation will cost about Rs.1 lakh. The petitioner, therefore, made Misc. Civil Application No.64 of 2006 in MACP No.184 of 1993. The same is rejected by the learned Member of the Tribunal by order dated 17th April 2006 on the ground that, 'an amount of Rs.10,000/- is already ordered to be released in MACP No.183 of 1993 for this very purpose'. This order is challenged in Special Civil Application No.12041 of 2006. Similarly, Misc. Civil Application No.63 of 2006 filed in MACP

No.185 of 1993 is also rejected by order dated 17th April 2006, on the same ground. This order is challenged in Special Civil Application No.12044 of 2006. The order passed in Misc. Civil Application No.62 of 2006 filed in MACP No.183 of 1993, allowing release of only Rs.10,000/- by order dated 17th April 2006, is challenged in Special Civil Application No.12043 of 2006 on the ground of insufficiency. It is the say of the petitioner that to get himself operated as per the medical advice, this amount will be too small.

2. The learned advocate for the petitioner in all these petitions submitted that the petitioner is the sole surviving member in his family as he has already lost his wife and the son in the fateful accident on 10th November 1992. He submitted that keeping these amounts in Fixed Deposits for a period of five years and allowing the petitioner to undergo the agony of pain for which an operation is advised by the doctor does not serve the ends of justice. The learned advocate submitted that the amount kept in Fixed Deposits in the name of the petitioner in the aforesaid three MACPs is,

MACP No.183 of 1993 .. Rs.55,665/-

MACP No.184 of 1993 .. Rs.96,030/-

MACP No.185 of 1993 .. Rs.26,480/-

The learned advocate for the petitioner submitted that

this amount is of no use to the petitioner, if it is not available for his timely treatment, which is required to get the petitioner relieved of the pain which he is suffering. She submitted that in all about Rs.1 lakh are required which may be made available to the petitioner either by release of proportionate amount from all the three Fixed Deposit Receipts (FDR) or from only one FDR.

The learned advocate for the petitioner showed her fairness. She submitted that Rs.10,000/- is already ordered to be released by the Tribunal in MACP No.183 of 1993, therefore, only Rs.90,000/- may be released to meet with the estimated expenses of the operation.

3. Taking into consideration the facts of the case and taking into consideration the fact that the petitioner is the sole surviving member, not a minor, who has already suffered wrath of the nature, sustained multiple injuries resulting into multiple complications and loss of two family members-wife and son, it will be in the fitness of things to see that he is not made to undergo further agony, which can be taken care of by release of the amount so that he is

able to get himself operated to get rid of the pain he is suffering from.

To avoid loss of interest, instead of ordering proportionate release of the amount from all the three FDRs, it is deemed fit that the amount of Rs.90,000/- (Rupees ninety thousand only) be released from FDR No.1293705 dated 12th April 2004. The State Bank of Saurashtra is directed to release an amount of Rs.90,000/- (Rupees ninety thousand only) from the aforesaid FDR.

4. A copy of this order be sent to the State Bank of Saurashtra, Surendranagar for its necessary compliance. Rule is made absolute in Special Civil Application No.12041 of 2006. In view of the order passed in Special Civil Application No.12041 of 2006, Special Civil Applications No.12043 of 2006 and 12044 of 2006 are not pressed. Both these petitions are disposed of accordingly and rule is discharged. Direct service is permitted. No order as to costs.

(RAVI R. TRIPATHI, J.)

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